

E Judgment in *B. R.* for the Rectors House of *Exon. Coll.* in *Oxon.* upon a special Verdict, (though the Plaintiff was not Statutably elected, yet) the sole Question was, Whether the Deprivation of Dr. *Bury* the Rector, by the Bishop of *Exeter* the Visitor, be good in Law? And Adjudged for the Defendant, that the Sentence of Deprivation is void in Law; and from that Judgment the Plaintiff brings his Writ of Error in the House of Lords?

The CASE.

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M R. Colmer one of the Fellows of the College, being Statutably Expell'd for Incontinency, Appeals to the Visitor, who sends Dr. *Masters* his Commissary, to hear the Appeal in *March*, 1689. Dr. *Masters* comes, and the Rector and Fellows attend him and Submit to him as in a Visitation, but as to the Appeal they do protest against it; because by the Statutes of the College, no Appeal lyes to the Visitor or his Commissary, but to the Vice-Chancellor of *Oxford*, who is Appointed the Judge to determine Controversies between the Rector and Fellows: And a Fellow when he takes his Oath, Renounces all Appeals, if he shall happen to be Expelled by the Rector and Senior Fellows; and that Statute which directeth the Expulsion of a Fellow, forbiddeth all Appeals.

The Visitor comes in Person upon the 16th. of *June* following, the Rector and Major part of the Fellows under their Common Seal, (being Bound by their Oaths to defend their privileges) protest, that they cannot in Conscience Submit to him in that Visitation, because by the Statutes, the Visitor or his Commissary can *Liberè accedere ad Collegium, but once in Five Years*, unless Requested by the Rector and Senior Fellows; and they conceived that the Commissary's coming before was a *Liber Accessus*, and an Execution of the Quinquennial Power. The Visitor thereupon gave an Oath to *Webber* concerning the Summons, and did an Act of Visitation, and call'd over the Names of the Rector and Fellows, and they Appearing and Protesting, he departed.

The Bishop comes again the 24th. of *July* following, at which time the Rector and Major part of the Fellows under their Common Seal, make the like Protestation as before; and then he Adjourned to the 25th. and at that time he Suspends the Major part of the Fellows, Seniors and others, and deprives ~~one~~ one of the Senior Fellows, and Adjourns to the 26th. day; and at that time he deprives the Rector, with the Consent of Four Fellows that were not Seniors; and to enforce his Sentence, Excommunicated the Rector if he did not within a Week depart from his Possession; which Excommunication upon full hearing, the Court of *Kings Bench* commanded him to revoke, but he refuseth to do it.

The REASONS of the Judgment of the Kings-Bench, were:

1. **T**hat by the Statutes of the College, the Bishop can come to Visit but *once in Five Years*, and that Visitation can last but three days; but in the Case in Question, the Rector was deprived upon the 26th. day of *July*, which was the 4th. day of the pretended Visitation: For the 16th. day of *June* was to be reckon'd one day of the Visitation; for the Bishop appointed it to be so, and upon that day did an Act of Visitation.

2. By the Statutes of the College the Visitor may not Punish Rector or Fellow otherwise then the Statutes direct, and there is a list of such crimes as are to be punished by Deprivation; but Contumacy is not mentioned. Nor did the Founder intend to put the Rector and Fellows in worse condition than any other *English Men*, by being Perjured if they do not defend their Privileges, or Ruin'd if they do.

3. By the Statutes of the College, the Consent of Four of the Seven Senior Fellows is absolutely necessary to the Deprivation of a Rector: And tho' to his Sentence there was the Consent of Four Fellows, yet they were not of the Seven Seniors; and the Suspension of the Seven Seniors did not debar them of this right of Consenting to the Sentence.

The Visitor is appointed by the Statutes the Expositor of the words, and meaning of them; and by taking the Consent of Four Fellows (tho' they be not the right) to the Sentence, and their Subscriptions thereto, he has Expounded the words, so as to require such a Consent as necessary.

4. The Rector's refusing to submit to this Visitation upon a mistake, if there were any, is not a Reasonable cause for his deprivation.

5. The Rector was never Personally charged with the Crime for which he was deprived, nor had any time or warning given him to Answer such a charge, as the words of the Statute do require; and there be words in the Sentence which are too general, and give no particular Charge, and can receive no particular Answer; as *Aliorum criminum enormium*.

6. That the Reasonableness or Unreasonableness of a Visitors Sentence, is Examenable in *Westminster-Hall*, is the Opinion of the Lord Chief Justice *Dyer* fol. 209. as in Dr. *Coveny's* Case the President of *Magdalen Coll.* in *Oxon.* and of the Lord Chief Justice *Cook*, in his 11. *Rep.* fol. 99. in *James Bagg's* Case.

And therefore it is Humbly Hoped, that the Judgment given by the Kings-Bench for the Defendant, will be Affirmed by your LORDSHIPS.